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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

<u>NATIONAL UNION FIRE INSURANCE</u>	)	
<u>COMPANY OF PITTSBURGH, PA</u>	)	
Plaintiff,	)	
	)	
v.	)	<b>1:20-cv-04042-JPC</b>
	)	
<u>ACCELERATED COURIER, INC,</u>	)	
	)	
Defendant.	)	
	)	

**DEFENDANT’S MOTION TO COMPEL INITIAL DISCLOSURES AND REQUEST  
FOR ATTORNEY’S FEES AND SANCTIONS PURSUANT TO FED. R. CIV. P. 37**

Defendant, Accelerated Courier, Inc., (“Accelerated”), hereby moves this Honorable Court for an Order pursuant to Fed. R. Civ. P. 37(a)(3)(A), compelling Plaintiff National Union Fire Insurance Company of Pittsburgh, PA’s (“National Union” or the “Plaintiff”) to produce Initial Disclosures and responses to Defendant’s Interrogatory Requests and Requests for the Production of Documents, as required by Fed. R. Civ. P. 26.

The Defendant also requests that this Court sanction the Plaintiff and order him to pay the reasonable attorney’s fees and costs incurred by the Defendant in bringing this motion, pursuant to Fed. R. Civ. P. 37(b)(2)(C) and in light of Plaintiff’s failure to comply with the deadline given by this Court the July 1, 2021 pretrial conference.

**RELEVANT BACKGROUND**

In compliance with the Civil Management Plan and Scheduling Order entered in this matter, Defendant submitted Initial Disclosures, Interrogatory Requests, and Requests for the Production of Documents to the Plaintiff on March 11, 2021. See Exhibits 1-4. Defendant's counsel contacted Plaintiff's counsel on numerous occasions, seeking Plaintiff's Initial Disclosures or responses to Defendant's discovery requests. See Exhibit 5. Plaintiff disregarded both the scheduling order and these requests, providing no discovery in response.

At the Defendant's request, the Court then held a pre-motion discovery conference on July 1, 2021, to discuss Plaintiff's failure to provide Initial Disclosures or responses to Defendant's Interrogatory Requests and Requests for the Production of Documents. See Exhibit 6. In this conference, Plaintiff's counsel provided no explanation for his extensive delays in responding to Defendant's discovery demands; the Court ordered Plaintiff to provide the required disclosures and responses within two weeks and extended the discovery deadline to August 27, 2021. See Exhibit 7. Notwithstanding the Court's directive—and the parties' agreement thereto—during the July 1, 2021 conference, Plaintiff's counsel failed to produce any discovery responses and disclosures by July 15, 2021, as ordered. Significantly, this failure has hindered Defendant's ability to proceed with discovery as the Defendant continues to be unable to seek the deposition of the Plaintiff as a result of Plaintiff's noncompliance with discovery requirements.

In addition to compelling the Plaintiff to produce the outstanding discovery, the Defendant requests that this Honorable Court sanction the Plaintiff, due to the Plaintiff's disregard of his discovery obligations and the agreement made before this Court in the July 1, 2021 conference. As part of the sanction against the Plaintiff, the Defendant requests reasonable attorney's fees and costs in filing his Motion to Compel and the foregoing Motion

pursuant to Fed. R. Civ. P. 37(b)(2)(C).

### CONCLUSION

For all the foregoing reasons, the Defendant respectfully requests that this Court compel the Plaintiff pursuant to Fed. R. Civ. P. 37(a)(3)(A) to produce Initial Disclosures and responses to Defendant's discovery requests within ten (10) days and sanction the Plaintiff pursuant to Fed. R. Civ. P. 37(b)(2)(C) for his continued disregard of his discovery obligations and failure to comply with the Court's directive in the July 1, 2021 conference by awarding the Defendant reasonable attorney's fees and costs.

Respectfully submitted,

Defendant,  
Accelerated Courier, Inc.  
By its attorney,

July 19, 2021


/s/ Joseph A. Nett

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In light of Plaintiff's apparent production of the outstanding items, *see* Dkt. 26, this request is denied without prejudice.

SO ORDERED.

Date: August 4, 2021  
New York, New York

  
JOHN P. CRONAN  
United States District Judge